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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 JAMES LYNN HINES
12 Inmate No. 197067,

13 Plaintiff,

14 vs.

15 ARNOLD SCHWARZENEGGER,
16 Governor, et al.,

17 Defendants.
18

Civil No. 07-1817 BEN (AJB)

**ORDER DISMISSING CIVIL
ACTION FOR FAILING TO PAY
FILING FEE OR MOVE TO
PROCEED *IN FORMA PAUPERIS*
PURSUANT TO 28 U.S.C. § 1915(a)**

19 Plaintiff, an inmate currently incarcerated at the Arizona State Prison Complex (“ASPC”)
20 in Florence, Arizona, and proceeding pro se, has filed a civil rights complaint pursuant to 42
21 U.S.C. § 1983.¹

22 **I. Failure to Pay Filing Fee or Request IFP Status**

23 Effective April 9, 2006, all parties instituting any civil action, suit or proceeding in a
24 district court of the United States, other than a writ of habeas corpus, must pay a filing fee of
25 \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party’s failure to pay only if
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28 ¹ The Court notes that Plaintiff was formerly a California state inmate. Thus, it is unclear whether Plaintiff is currently a California state inmate housed in Arizona or he is an inmate within the Arizona State correctional system.

1 the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a).
2 See *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

3 Here, Plaintiff has neither prepaid the \$350 filing fee required to commence this action,
4 nor has he submitted a Motion to Proceed IFP. Therefore, this action is subject to immediate
5 dismissal pursuant to 28 U.S.C. § 1914(a).

6 **II. Conclusion and Order**

7 For the reasons set forth above, the Court hereby:

8 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
9 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

10 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is "Filed"
11 to: (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to proceed
12 IFP which includes a certified copy of his trust account statement for the 6-month period
13 preceding the filing of his Complaint pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR
14 3.2(b).

15 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with the
16 Court's approved form "Motion and Declaration in Support of Motion to Proceed *In Forma*
17 *Pauperis*." If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the
18 attached Motion to Proceed IFP within that time, this action shall remain dismissed without
19 prejudice and without further Order of the Court.

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22 DATED: September 21, 2007

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25 Hon. Roger T. Benitez
26 United States District Judge
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